

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED BY  D.C.

05 NOV -7 PM 3: 15

THOMAS M. GOULD
CLERK, U.S. DISTRICT COURT
WD CT MEMPHIS

JOE WILLIAM FORD, JR.,

Plaintiff,

vs.

CITY OF MEMPHIS, et al.,

Defendants.

)
)
)
)
)
)
)
)
)
)

No. 05-2017 MaV

ORDER GRANTING PLAINTIFF'S MOTION TO EXTEND DEADLINE TO DESIGNATE
EXPERT DISCLOSURE

Before the court is the October 17, 2005 motion of the plaintiff, Joe William Ford, Jr., to extend the deadline to designate expert disclosure to October 28, 2005. Defendants Workman and Richardson oppose the motion. Defendant City of Memphis has not responded to the motion, and the time for response has expired.

Ford argues that the deadline to disclose his expert information should be extended pursuant to Rule 6(b)(1) because he filed his motion to extend prior to the expiration of the October 17, 2005 deadline set by the scheduling order. As Workman and Richardson point out, however, the scheduling order set the deadline for the defendants' Rule 26 expert information as October 17, 2005. Ford's Rule 26 expert information was due one month prior to that date on September 16, 2005. As a result, Ford's

48

motion was not filed prior to the expiration of the deadline set by the scheduling order, and will not be granted on such grounds.

According to Rule 6(b)(2), however, a court may grant a motion made after the expiration of the deadline "where the failure to act was the result of excusable neglect." FED. R. CIV. P. 6(b)(2). Although Workman and Richardson argue that Ford has failed to offer any justification for the untimely disclosure, it appears to the court that Ford's counsel misread the scheduling order and believed that Ford's Rule 26 expert information deadline was October 17, 2005 - the date actually set as the defendants' deadline.

Workman and Richardson also argue that they are prejudiced by Ford's untimely disclosure because they will need additional time to consider their defense against Ford's designated expert and to consider whether to retain their own expert. Workman and Richardson contend that this will delay the case and require the court to amend the scheduling order, which currently requires all discovery and expert witness depositions be completed by November 18, 2005. The court does not believe that the defendants will be prejudiced, however, because the scheduling order may be amended without delaying the trial set for April 17, 2006.

Because Ford's failure to meet the deadline appears to be the result of excusable neglect and because the parties will not suffer any undue prejudice, Ford's motion to extend the deadline to

designate expert disclosure is granted. The Rule 16(b) scheduling order entered March 28, 2005 is hereby amended as follows: (1) the plaintiff's Rule 26 expert information must be disclosed by Monday, November 14, 2005; (2) the defendants' Rule 26 expert information must be disclosed by Thursday, December 15, 2005; (3) all discovery - including document production, depositions, expert witness depositions, interrogatories, and requests for admissions - must be completed by Monday, January 16, 2006; and (4) dispositive motions must be filed by Friday, February 10, 2006. All other dates remain the same.

IT IS SO ORDERED this 7th day of November, 2005.



DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE



Notice of Distribution

This notice confirms a copy of the document docketed as number 48 in case 2:05-CV-02017 was distributed by fax, mail, or direct printing on November 9, 2005 to the parties listed.

Jimmy Moore
CIRCUIT COURT, 30TH JUDICIAL DISTRICT
140 Adams Ave.
Rm. 224
Memphis, TN 38103

Deborah A. Godwin
GODWIN MORRIS LAURENZI & BLOOMFIELD, P.C.
50 N. Front St.
Ste. 800
Memphis, TN 38103

Kathleen L. Caldwell
LAW OFFICE OF KATHLEEN L. CALDWELL
2080 Peabody Ave.
Memphis, TN 38104

Handel R. Durham
DURHAM & ASSOCIATES
100 North Main St.
Ste. 2601
Memphis, TN 38103

Henry L. Klein
APPERSON CRUMP & MAXWELL, PLC
6000 Poplar Ave.
Ste. 400
Memphis, TN 38119--397

Betsy McKinney
GODWIN MORRIS LAURENZI & BLOOMFIELD, P.C.
50 N. Front St.
Ste. 800
Memphis, TN 38103

Honorable Samuel Mays
US DISTRICT COURT